WISCONSIN DEPARTMENT OF PUBLIC INSTRUCTION

Tony Evers, PhD, State Superintendent

Assembly Committee on Education
April 7, 2011

Department of Public Instruction Testimony
on 2011 Senate Bill 2

Thank you to Chairperson Kestell and members of the committee for the opportunity to testify before you today. My name is Jennifer Kammerud and I am the Legislative Liaison for the Department of Public Instruction (DPI). With me today is Mary Jo Cleaver the department's Open Enrollment Consultant. On behalf of State Superintendent Tony Evers we are here to testify for information only on Senate Bill 2 (SB 2).

The Department supports many of the provisions of SB 2. For example, SB 2 would expand the open enrollment application period from a three-week period in February to the three full months of February, March and April. We agree that this is an opportune time to allow parents more time to submit their open enrollment applications.

Open enrollment is a popular and successful program. However, there is no question that the short application period is frustrating to parents. A three-week application period provides a very short window and allows little margin for error. If parents aren't following the news at just the right time, or don't talk to someone who knows about the program, or if they set aside the school newsletter, they can easily miss it. February isn't the time when most parents are thinking about next year's schooling. We believe that the online application and online tracking and reporting of open enrolled students has gained enough efficiencies that the complicated tasks involved in administering open enrollment applications can still be wrapped up by the beginning of July. Thus, we believe that expanding the application period through April gives parents more time to apply and to do so during the spring when they are more likely to be thinking about next school year, but doesn't take up so much additional time that it ends up creating frustration on the other end.

SB 2 also provides some specific exceptions to the application period. Sometimes things happen that are out of a parent's control and that create compelling reasons for allowing open enrollment outside the regular application period: families may move in from out of state or due to military orders, families may become homeless, children may be bullied or become victims of a crime, children may move in and out of foster care or may move due to changes in custody or parental placement. SB 2 would allow parents to apply for open enrollment outside of the application period for these specific reasons.

While the Department supports many of the provisions of SB 2, we believe that one of the exceptions provided in the amended bill goes too far and could result in significant fiscal problems for resident school districts and could also lead to selective and unfair decisions on the part of some nonresident school districts. SB 2 contains an additional exception to the open enrollment window that would allow open enrollment at any time of the year if the parent and nonresident school district agree it is in the best interest of the child.

The department is deeply concerned about this provision due to the effect it would have on resident school districts and the students they serve. We acknowledge that there are instances where the best interest of the child would be served by allowing a transfer outside of the regular

application period. But there are three parties to an open enrollment transfer: the parent, the nonresident school district and the resident school district that must pay for open enrollment. A wide-open exception, that doesn't involve the resident district, could place the resident district in financial peril at the hands of parties who bear no cost for the decision and have no responsibility to consider the needs of children who continue to be educated in the resident district. This would be an exception in addition to all the other exceptions created in this bill and an extended application period; it should only be used if it is truly needed.

Also, allowing a nonresident district alone to determine the best interest of the child might result in decisions that are really in the best interest of the nonresident district. A school district or a virtual charter school that is looking to open enrollment to help its own financial situation could promote itself year-round, making the regular open enrollment application period a sham.

In addition, a district with few spaces must follow its criteria exactly in order to approve or deny applications during the application period. However, allowing the district to accept students outside the application period based on only its own determination of the best interest of the child could allow the district to select students who were not approved during the random selection process. This process is required during the regular open enrollment application period.

The department would be here in support of this bill today if this provision were removed or amended to make clear that the resident school district, along with the parent and nonresident school district, must all agree it is in the best interest of the child to open enroll under this exception.

Thank you and we would be happy to answer any questions you may have.

disabilityrights | WISCONSIN

TESTIMONY IN OPPOSITION TO SB-2

by

Jeffrey Spitzer-Resnick

Managing Attorney

Due to the conflict with today's Joint Finance Committee hearing in Stevens Point, which I am attending, I cannot attend today's hearing on SB-2. However, I am submitting this testimony opposing the bill in its current form, on behalf of Disability Rights Wisconsin (DRW), Wisconsin's protection and advocacy agency for people with disabilities, in the hope that the committee will take a thoughtful and measured approach to the changes to the Open Enrollment program proposed by this bill.

DRW's first concern is with the assumption in the bill that a non-resident school district will be able to predict in January of the prior school year, how many regular and special education spaces it will have available 8 months later. In today's mobile society, such a prediction is speculative at best. Given that one reason that school districts can deny the admission of non-resident students is the lack of space, SB-2's requirement that this determination be made earlier means that this program will become less available, and be based on speculative information. It simply baffles us as to why this determination needs to be rushed.

Second, DRW is concerned with the delay that the bill calls for in both the application process and the decision process. By delaying these processes, planning for both families and school districts will become far more difficult. We are frequently involved in cases that are resolved early by successful application for open enrollment. Under this bill, this process will now be delayed, and resolution of disputes will perhaps become impossible if these new timelines are put in place. Moreover, since there is no change in the appeal deadlines, appeals to DPI will occur over the summer and may not even be resolved before the school year begins. This will make it very difficult for both school districts and the families if DPI overturns a school district's denial of open enrollment either just before or worse yet, after the school year begins. Once again, we are mystified by what purpose these proposed changes seek to accomplish.

Third, SB-2 requires the student's disciplinary records to be sent to the non-resident school district whether the district requests them (as the statute currently states) or not. Yet, there is nothing in the Open Enrollment law that permits a non-resident school district to deny an open enrollment application based on such records. What, then is the purpose of sending those records? The only purpose that DRW can see is to bias the non-resident school district against the student who wishes to attend school there. It is likely to prompt non-resident schools to come up with subterfuges to deny open enrollment applications illegally, requiring parents to appeal, and then due to the delayed timelines, requiring all parties to wait on pins and needles until the next school year starts.

To remedy these problems in SB-2, as well as other concerns, DRW suggests the following modifications:

1. Modify the reporting provision related to special education DRW believes that it is both premature and arbitrary to require school districts to declare in January, how many special education slots they will have open the following school year. It is premature because many things could change between January and September which could alter this number, and it is arbitrary because there is really no such thing as a special education slot, since the very nature of special education is highly individualized. Some children with disabilities are educated full time in a general education class room. Others are educated full time in a segregated resource room, and many have a wide variety of mixture between those settings. In addition, keep in mind that our Open Enrollment law already

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has a provision to deny open enrollment to special education students who are very expensive to educate, so adding this additional reason of insufficient slots is simply unnecessary. **Therefore, DRW recommends deleting the provision in SB 2 which requires school districts to identify a number of special education slots that will be available the following school year for open enrollment purposes.**

2. Shorten the modified period of open enrollment application–While DRW does not oppose some lengthening of the open enrollment application period, we are concerned that SB-2 lengthens the period too long, resulting in uncertainty for school districts and parents that can continue all the way until the following school year. This is especially true if a parent appeals a denial of an open enrollment application. **Therefore, DRW recommends modifying SB 2 by ending the open enrollment application period on the 3rd Friday of March.**

3. Retain the current disciplinary record provision–DRW has heard no evidence that there is a problem with the current provision regarding requesting disciplinary records. Moreover, we see no benefit from the modification in SB 2 which requires transmission of such records since there is no provision in the open enrollment law which permits a denial of an open enrollment application due to a discipline problem that does not result in an expulsion.

4. Modify the IEP transmission provision–While DRW does not oppose transmission of a student's IEP with an open enrollment application, since state and federal law consider this document confidential, this provision should be modified to require parental consent for such transmission. **Therefore, DRW recommends requiring parental consent for transmission of a student's IEP.**

5. Modify Amendment 2's "best interests" provision–Amendment 2 adds new categories for open enrollment that may occur any time during the year. Generally, DRW supports this new flexibility for students in these situations. However, DRW is concerned that the provision which requires the school district to agree that the transfer is in the undefined "best interests" of the student will create more barriers than openings. **Therefore, DRW recommends either eliminating the "best interest" provision or defining it to specifically include the academic and emotional health of the child, as informed by the parent, one or more current educators, and one or more current treatment providers.**

6. **Delete new appeal standard**--Amendment 2 sets a new high standard making it virtually impossible for parents to successfully appeal open enrollment decisions by requiring DPI to uphold school board decisions "unless the department finds that the decision was arbitrary or unreasonable." DRW is puzzled as to why such an imbalanced approach unfavorable to parents would be inserted into a law that is intended to give parents more choices.

7. **Add disability admissions and denials to annual report**–Under current law, nobody knows how many children with disabilities apply for open enrollment, and how many of those applications are accepted and denied.

In sum, while DRW does not claim that the current Open Enrollment process is perfect, and would be more than willing to participate in a deliberative process to improve it, for the reasons set forth above, SB-2 is deeply flawed and we urge the committee to vote against the bill, or at the very least, to delay a vote until thoughtful amendments can improve the bill.

If you have any questions, fell free to contact me at the number listed on our letterhead or by e-mail at: spitznick@drwi.org

April 7, 2011

Testimony of Karl S. Peterson, Executive Director, Insight School of Wisconsin

Good Morning, Mr. Chairman and Members of the Education Committee –

My name is Karl Peterson and I am privileged to serve as Executive Director of Insight School of Wisconsin (ISWI). ISWI is a full-time, accredited, diploma-granting virtual charter school serving students in grades 9-12. ISWI is governed by the Grantsburg School District and the Department of Public Instruction (DPI).

ISWI unites expertise in online learning with cutting edge technology to provide a quality educational option for several hundred students throughout the state. ISWI serves many "at risk" students (credit deficient, low G.P.A., 17-20 years old, often out of education for a year or more). Nevertheless, for the Class of 2011, more than 76% plan to continue their education/training after high school. Additionally, ISWI recently began providing part-time course offerings especially for smaller, rural Wisconsin schools.

Each student is instructed by a DPI certified teacher and guided by a coach who fulfills the roles of motivator, mentor and academic advisor. Our students are issued all the necessary tools needed to complete their curriculum including text-books and materials, a laptop computer, printer and monthly Internet stipend.

It is my pleasure to address this Committee, and to thank you for your dedication to providing educational opportunities for all Wisconsin students.

I have been involved in secondary education for eighteen years, as a principal, teacher, coach and advocate for students. That latter role, an advocate for students, is my mission and my passion. I have witnessed how students learn in many different ways,

how students' skills are honed through a variety of teaching strategies and, to be sure, how "one size does not fit all." My role with ISWI is to assure parents and students that another route to an accredited high school diploma is available, and if this is the route they need and choose, we will do everything possible to make that opportunity one that is easily accessible, seamless and efficient.

Senate Bill 2 and its Amendments provide the opportunity for parents and students to seek the educational route which best serves their needs. It does so, primarily, by expanding the period during which a parent may apply to have a student attend a nonresident school district. In the past, the brevity of this time period has confused some parents and exasperated others – all of whom are seeking the best education route for their student. Senate Bill 2 embraces Superintendent Ever's philosophy that "every child must graduate ready for further education and the workforce," and that "we must align our efforts so our students benefit from both college and career preparation, learning the skills and knowledge necessary to be contributing members of our communities." Expanding the Open Enrollment time period will assist more students in entering and re-entering school and achieving those goals.

Senate Amendment 1 to Senate Bill 2 is very apropos. It, at times, has been difficult to obtain a student's IEP from the resident district in order to meet the "cost out" deadline. This amendment will assure timelier processing of a student's IEP and more efficient provision of special education services for that student.

Thank you again for your leadership and commitment to Wisconsin's students.

WISCONSIN EDUCATION ASSOCIATION COUNCIL
an NEA affiliate

To: Members of the Assembly Education Committee

From: Wisconsin Education Association Council

Date: April 6, 2011

Re: Senate Bill 2, extending the open enrollment window

The Wisconsin Education Association Council has concerns with Senate Bill 2, as amended by the Senate, due to the planning challenges it presents to school districts without sufficient justification.

Current law establishes a process for a student to attend school in another school district the following school year with applications due between the first Monday in February and the third Friday following the first Monday in February. The Department of Public Instruction transfers a specified amount of funding from the student's home district to the school district he or she is attending under the Open Enrollment Program.

Senate Bill 2 expands the open enrollment period by two months until the last weekday in April, giving parents more time to consider options for their child's education. As amended in the Senate, Senate Bill 2 provides for year-round open enrollment if the student meets one of the following criteria: 1) the student has been the victim of a violent criminal offense 2) the student has become homeless 3) the student has been the victim of repeated bullying or harassment 4) the place of residence for the student's parent has changed due to military orders 5) the student has moved into the state or 6) the place of residence has changed for the student due to a court order, custody agreement or foster care placement. These circumstances are limited in nature and make sound policy sense. When confronted with these circumstances, parents should have the freedom to open enroll their child in another school district and not be confined by current law's parameters for the open enrollment window.

The concerning provision in Senate Bill 2, as amended by the Senate, is a seventh criterion, opening the door to year-round open enrollment if the parent of the student and the *non-resident* school board agree that attending school in the non-resident school district is in the best interest of the child. It leaves the *resident* school district out of the decision-making process. This provision would not only introduce unjustified unpredictability and uncertainty for school districts, it could also be used in an arbitrary fashion. Imagine a situation where parents are upset that their child received a bad grade or wasn't selected to be a starter on the football team so they want to enroll their child in another school district. This seventh criterion essentially acts as a catchall, eclipsing the bill's other provisions, and transforming the legislation into a year-round open enrollment bill, including open enrollment to a virtual charter school. WEAC supports deleting this last criterion, or, at a minimum, giving the resident school district a voice in the decision-making process.

If you have any questions, please contact Deb Sybell, WEAC Legislative Program Coordinator, at (608) 298-2327 or sybelld@weac.org.

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John H. Ashley, Executive Director

TO: Members, Assembly Committee on Education
FROM: Dan Rossmiller, Government Relations Director
DATE: April 7, 2011
RE: **Senate Bill 2**, relating to: changing the timing of the application process under the open enrollment program and permitting certain pupils to submit open enrollment applications outside of the regular application period.

The Wisconsin Association of School Boards took no position on Senate Bill 2 as it was introduced; however, we oppose the bill in its current form. Specifically, we have strong concerns about language added by Senate Amendment 2 that creates a "catch all" blanket exception to the open enrollment window. This language is found at page 9, lines 5 and 6 of the engrossed bill. Not only would this "exception number 7" language effectively create a year-round open enrollment window, it would have serious financial impacts on the home districts (resident districts) of students who seek to open enroll to other districts.

This "exception number 7" provision would allow a pupil to open enroll into another district at any time so long as "the parent and the nonresident school board agree that attending school in the nonresident school district is in the best interest of the pupil."

Not only would resident districts have no control over the impact of such decisions, they would have no input to such decisions and receive no advance notice that a pupil contemplates a transfer. Further, given that a substantial amount of money, in the form of an open enrollment transfer payment, attaches to each pupil who applies for open enrollment under this provision, an incentive is created for nonresident districts to find the transfer is in the pupil's best interest.

School districts have been under state-imposed revenue controls for 18 years, which have caused cuts in programs and staff in many districts over that period, in many cases eliminating programs that made enrolment in those districts attractive. The proposed 2011-13 state budget cuts state aid to school districts by $834 million compared to current levels. In addition the proposed budget reduces total available school resources statewide by $1.7 billion. Indeed, it is hard to imagine any circumstance under which a nonresident district would not take finances into consideration in determining it would be in the pupil's best interest to make the move, provided there is space available in the district.

We urge this committee to remove this "exception number 7" provision entirely or place a limit on the extent to which it can be used as well as modify it to give the school board of the resident district an opportunity to weigh in with respect to this decision.

Placing a limit on open enrollment transfers is not unprecedented. Currently, there is a limit on open enrollment into virtual charter schools. When the open enrollment program was first established in the 1998-99 school year, there was a 3 percent cap placed on open enrollments out of any district. This cap was increased by one percent each year until it reached ten percent, then it was eliminated. The Legislature could always revisit any cap it imposes. That is happening presently with regard to the cap on open enrollment into virtual charter schools.

School boards are prepared to accept and work with an expanded open enrollment window, and even exceptions that are narrowly crafted to protect the interests of certain pupils if that is what the Legislature decides to adopt; however, school boards strongly oppose creating an unlimited open enrollment window that provides a pupil's home district with no opportunity to at least discuss the proposed transfers of students away from it and the impact that would have on the resident district. The problem with proposed "exception number 7" is that it is such an open-ended exception that could swallow up the whole open enrollment process.

The fact that the use of exception number 7 is unlimited and can occur at any time creates a situation of unpredictability for all districts that may make it difficult to plan programs and services and manage budgets. We urge the committee to change it. We are happy to work with you as you consider and make those changes.

Thank you.